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SERVICE DATE – DECEMBER 19, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34794]

BNSF Railway Company — Acquisition and Operation Exemption — State of
South Dakota

BNSF Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 368 route miles of railroad lines, referred to as the “Core Lines,” that are owned by the State of South Dakota (the State). These lines, which are described in a July 10, 1986 Operating Agreement between a BNSF predecessor (Burlington Northern Railroad Company) and the State, extend principally: between milepost (MP) 777.0 near Aberdeen, SD, and MP 650.6 near Mitchell, SD; between MP 518.9 near Sioux City, IA, and MP 649.7 near Mitchell, SD; between MP 293.1 near Canton, SD, and MP 650.6 near Mitchell, SD; between MPs 74.1 and 68.8 in Sioux Falls, SD; between MP 68.8 near Sioux Falls, SD, and MP 49.4 near Canton, SD; and between MPs 511.9 and 518.9 in Sioux City, IA.

The Core Lines were once part of the rail system operated by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the Milwaukee Road). The Milwaukee Road entered bankruptcy in 1977, and, in 1980, it received, both from the Interstate Commerce Commission (ICC) and from the bankruptcy court, approval to abandon the Core Lines. In 1981, the abandoned Core Lines were acquired by the State,

and, since on or about July 6, 1981, BNSF has provided common carrier rail service over the Core Lines pursuant to various agreements (the most recent of which is the 1986 Operating Agreement) with the State, and pursuant to a Modified Certificate of Public Convenience and Necessity (the modified certificate) issued by the ICC. See 49 CFR Part 1150, Subpart C (§ 1150.21 et seq.) (these are the “modified certificate” regulations that apply to operations over abandoned rail lines that have been acquired, through purchase or lease, by a State).

Because the Core Lines were abandoned by the Milwaukee Road, BNSF has invoked the notice of exemption procedures at 49 CFR Part 1150, Subpart D (§ 1150.31 et seq.) (these are the regulations that apply to acquisitions and operations under § 10901). See The Burlington Northern and Santa Fe Railway Company — Acquisition and Operation Exemption — Lac Qui Parle Regional Railroad Authority, STB Finance Docket No. 33364 (STB served Apr. 15, 1997); Burlington Northern Railroad Company — Acquisition and Operation Exemption — South Dakota Railroad Authority, Finance Docket No. 32017 (ICC served Apr. 2, 1992).

BNSF has stated that the “acquisition” authority encompassed by its exemption notice was expected to be effective on December 6, 2005, and that “operations” under its exemption notice were expected to begin on or after that date.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34794, must be filed with the Surface Transportation Board, 1925 K Street, N.W.,

Washington, DC 20423-0001. In addition, a copy of each pleading must be served on BNSF's representative: Adrian L. Steel, Jr., MAYER, BROWN, ROWE & MAW LLP, 1909 K Street, NW, Washington, DC 20006-1101.

Board decisions and notices are available on its website at
“WWW.STB.DOT.GOV.”

Decided: December 9, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary